

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

UNITED STATES OF AMERICA	:	Criminal No. 3:18-CR-00025 (NKM)
	:	
v.	:	
	:	
BENJAMIN DRAKE DALEY	:	
MICHAEL PAUL MISELIS	:	
THOMAS WALTER GILLEN	:	
COLE EVAN WHITE	:	

MOTION TO EXCLUDE TIME UNDER THE SPEEDY TRIAL ACT

The United States of America, through counsel, respectfully moves this Court to exclude the time between November 1, 2018 and the date upon which defendant Cole Evan White makes his first appearance before a judicial officer in the Western District of Virginia. In support, the United States provides the following:

I. BACKGROUND

On October 2, 2018, all four defendants were arrested in California after being charged in a criminal complaint issued from the Western District of Virginia. On October 10, 2018, a federal grand jury sitting in the Western District of Virginia returned an indictment charging all four defendants with (1) Conspiracy to Commit Riots, in violation of 18 U.S.C. § 371 and (2) a substantive violation of Riots, in violation of 18 U.S.C. § 2101. Having completed their removal proceedings in California, all four defendants are currently in the custody of the United States Marshals Service in transit to the Western District of Virginia in Charlottesville for further proceedings in this matter. Defendants Daley, Miselis, and Gillen are expected to arrive on or

about October 31, 2018, and their first appearance before a judicial officer is scheduled for November 1, 2018, before the Honorable Joel C. Hoppe, United States Magistrate Judge.

Defendant White, the last defendant to complete his removal hearings in California, will not arrive until the next scheduled airlift, which is expected on or around November 14, 2018. Defendant White presumably will make his first appearance the next day on November 15, 2018.

II. DISCUSSION

Under the Speedy Trial Act, “the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date occurs last.” 18 U.S.C. § 3161(c)(1). In computing these seventy days, a court shall exclude “[a] reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.” 18 U.S.C. § 3161(h)(6). The Supreme Court has stated: “All defendants who are joined for trial generally fall within the speedy trial computation of the latest defendant.” Henderson v. United States, 476 U.S. 321, 323 n.2 (1986).

Because Defendants Daley, Miselis, and Gillen will make their first appearance on November 1, 2018, before a judicial officer of the court where their charges are pending, their speedy trial clock will commence on that date. However, the time as to Defendant White will not begin to accrue until he appears on or about November 15, 2018. See United States v. Munoz-Amado, 182 F.3d 57, 60 (1st Cir. 1999) (after a defendant’s removal, time does not begin to accrue for speedy trial act purposes until defendant makes first appearance before judicial officer in

charging district); see also United States v. Ward, 211 F.3d 356, 360 (7th Cir. 2000). Because Defendant White is a properly joined co-defendant as to whom the clock has not yet commenced, this Court should exclude the time from the date of his co-defendants' first appearance (November 1, 2018) to his first appearance (on or about November 15, 2018) from the computation of time for the remaining defendants under the Speedy Trial Act so that "all the defendants who are joined for trial . . . fall within the speedy trial computation of the latest defendant." Henderson, 476 U.S. at 323 n.2.

WHEREFORE, for the foregoing reasons, the United States requests that the Court grant this motion to exclude time under the speedy trial act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018, I electronically filed the foregoing motion with the Clerk of the Court using CM/ECF system, which will send notification of such filing to all counsel of record.

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